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August 30, 2011

Jeff S. Jordan
Supervisory Attorney
Complaints Examination & Legal Administration
Federal Election Commission
999 E Street, NW
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VIA FACSIMILE: (202) 219-3923

RECEIVED
FEDERAL ELECTION
COMMISSION
2011 AUG 31 AM 7:57
OFFICE OF GENERAL
COUNSEL

Re: MUR 6485: Restore Our Future, Inc. Response
to Complaint against W Spann LLC

Dear Mr. Jordan:

We are writing this letter on behalf of Restore Our Future, Inc., and Charles R. Spies, in his official capacity as Treasurer (collectively referred to as "ROF") in response to the Complaint filed in the above-referenced matter by self-styled campaign "reform" groups, the Campaign Legal Center and Democracy 21 (collectively referred to as the "Complainants") against W Spann LLC and "John Doe, Jane Doe and other persons who created and operated W Spann LLC and made contributions to Restore Our Future in the name of W Spann LLC." (collectively "W Spann"). This response is made on behalf of ROF and is limited to the propriety of ROF's status as a respondent. ROF is not named as a respondent in the complaint, and there is no allegation of wrongdoing by ROF, but apparently an over-eager intake clerk in the FEC's Office of General Counsel took it upon him or herself to attempt to include ROF as a respondent also. The Complaint fails on its face to state even a "worst case" legal theory under which ROF could possibly have violated the Federal Election Campaign Act of 1971, as amended ("FECA" or "Act") and consequently should be immediately dismissed as regards ROF as a respondent.

The Commission may find "reason to believe" only if a Complaint sets forth sufficient specific facts, which, if proven true, would constitute a violation of the Act. See 11 C.F.R. § 111.4(a), (d). In this case, despite Complainants' vast resources and motivation to create some sort of scenario in the Complaint that, if proven, would constitute a violation of the Act by ROF, they were unable to assert any theory at all by which ROF could have violated the Act. Complainants frequently make public their disagreements with First Amendment protections for

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political speech¹ and are committed advocates for restrictions on political speech. As such, their organizations (Democracy 21 and the Campaign Legal Center) raise funds for their pro-regulatory lobbying efforts through periodically filing FEC complaints hyperbolically asserting violations of the Act by (usually) conservative-leaning organizations and candidates. We note this ideological agenda and practice not to pass judgment upon Complainants, but instead to reinforce that if Messrs. Hebert, Ryan and Wertheimer could have come up with some sort of theory under which ROF might have violated the Act, it is an almost certainty that they would have promptly, publicly and gleefully laid out the case against ROF's activities and filed a complaint with the Commission (as well as the U.S. Department of Justice, United Nations, etc.). However, Complainants did not file a complaint against ROF, and did not assert any facts which, if true, would constitute a violation of the Act by ROF.

The failure to name ROF as a respondent and/or assert any facts which, if true, would constitute a violation of the Act by ROF, is not merely a technical mistake. The contents of the Complaint are sworn to and signed in the presence of a notary public as required by 11 C.F.R. § 111.4(b)(2). However, because the Complaint names only W Spann as respondents, ROF cannot be added as a respondent in this matter by Commission staff. To do so would broaden the Complaint beyond what has been sworn to and signed, which would be impermissible under 11 C.F.R. § 111.4(b)(2). The Commission has taken the position that unwarranted legal conclusions from asserted facts or mere speculation will not be accepted as true. See MUR 4960, Commissioners Mason, Sandstrom, Smith and Thomas, Statement of Reasons (Dec. 21, 2001). Moreover, the Commission will dismiss a complaint when the allegations are refuted with sufficiently compelling evidence. See *id.*

In the instant case, no allegations have been made regarding ROF, so there are no allegations to refute and no refutation is necessary. We consequently respectfully request that the Commission recognize the legal and factual insufficiency of the Complaint on its face and dismiss it as regards the inclusion of ROF as a respondent.

¹ See Paul Blumenthal, *Super PAC Corporate Donations: Not All Contributions Are Equal*, HUFFINGTON POST, Aug. 11, 2011, available at http://www.huffingtonpost.com/2011/08/11/super-pac-corporate-donations_n_924865.html. ("We are just seeing the beginning of what could turn out to be an onslaught of corporate money being injected into our congressional and presidential campaigns," Democracy 21 President Fred Wertheimer told The Huffington Post. "The *Citizens United* decision has opened up Pandora's Box here.") and *Id.* ("The Campaign Legal Center's FEC Program Director, Paul S. Ryan, previously told The Huffington Post, 'There's a big difference between humans and corporations that the Supreme Court ignored in their *Citizens United* decision.'").

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Thank you for your prompt consideration of this matter, and please do not hesitate to contact me directly at (202) 572-8663 with any questions.

Respectfully submitted,



Charles R. Spies

Counsel and Treasurer to Restore Our Future, Inc.

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